

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:)
)
BARRETT PAVING MATERIALS,)
INCORPORATED,) **DOCKET NO. CAA-05-2003-0006**
)
RESPONDENT.)

CONSENT AGREEMENT AND FINAL ORDER

CONSENT AGREEMENT

Complainant, the Director, Air and Radiation Division, Region 5, United States Environmental Protection Agency, ("U.S. EPA"), having filed the Complaint for this civil administrative action against Barrett Paving Materials, Inc., Ypsilanti, Michigan, ("Respondent"), and;

Complainant and Respondent having agreed that the resolution of this action is in the public interest and that the entry of this Consent Agreement and Final Order ("CAFO") without further litigation is the most appropriate means of resolving this action;

NOW, THEREFORE, based upon the pleadings, before the taking of any testimony, without the adjudication of any issue of fact or law, and upon the consent and agreement of the Parties, it is hereby Ordered as follows:

I. PRELIMINARY STATEMENT

1. On May 16, 2003, Complainant initiated this action for the assessment of a civil penalty pursuant to section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), ("CAA" or the "Act"), and sections 22.1(a)(2) and 22.13 of the Consolidated Rules of Practice Governing the

Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1(a)(6) and 22.13.

2. The Complaint alleged, among other things, that Respondent added equipment at its facility but failed to comply with the regulations at 40 C.F.R. §§ 60.7(a)(1), 60.8(a), 60.676(a), 60.676(f), 60.676(i), and the Act.

3. On or about June 13, 2003, Respondent filed its Answer to the Complaint which admitted or denied the specific factual allegations of the Complaint and requested a hearing pursuant to section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A).

4. Respondent admits the jurisdictional allegations of the Complaint.

5. Respondent waives its right to an administrative hearing or appeal or judicial hearing or appeal on any issue of fact or law set forth in the Complaint.

6. This CAFO shall apply to and be binding upon Respondent, its officers, directors, servants, employees, agents, successors and assigns, including, but not limited to, subsequent purchasers.

II. TERMS AND CONDITIONS

7. Respondent consents to the issuance of this CAFO and the payment of a civil penalty to resolve this action without resort to further litigation or hearing.

8. Complainant has determined that an appropriate dollar civil penalty to resolve this action is \$5,631.25 pursuant to section 113(e) of the Act, 42 U.S.C. § 7413(e).

9. Within thirty (30) days of the effective date of this CAFO, Respondent shall submit a cashier's or certified check, payable to the order of the "Treasurer, United States of America," in the amount of \$5,631.25 to:

Region 5
U.S. Environmental Protection Agency
P.O. Box 70753
Chicago, IL 60673

Respondent shall provide a copy of the check to:

Regional Hearing Clerk
Planning and Management Division (R-19J)
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590;

Jeffery M. Trevino
Office of Regional Counsel (C-14J)
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590;

Tanya Boomer
Environmental Scientist
Air Enforcement and Compliance Assurance Branch
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard (AE-17J)
Chicago, IL 60604-3590

10. The civil penalty specified in paragraph nine (9) above is a civil penalty assessed by U.S. EPA against Respondent, to be paid by Respondent, and is not deductible for purposes of federal taxes.

11. Respondent agrees to complete two (2) separate and independent Supplemental Environmental Projects by October 31, 2005.

A. Respondent agrees to expend at least \$43,357.00 by May 31, 2004, to pave at least 14,000 square feet of road at its facility to reduce permitted fugitive emissions.

- B. Respondent agrees to expend at least \$51,697.00 by May 31, 2005, to construct at least a 50' x 12' wheel wash at the main entrance of its facility to reduce permitted fugitive emissions from the trucks at its facility.
- C. Respondent agrees to notify Complainant by July 1, 2005, that it has begun full and successful operation of its SEPs.
- D. Respondent agrees to submit to Complainant by October 31, 2005, a SEPs Final Report, including but not limited to, a detailed description of material and equipment costs, professional and labor expenses, operation and maintenance costs, and an evaluation of the effectiveness of the SEPs based upon its quarterly and annual emissions records. An employee or officer of authority with Respondent must sign the report, attesting to the thorough review of the information contained in the report and acknowledging the existence of civil and criminal liability for submission of false or misleading information to the United States. If Respondent fails to submit its SEPs Final Report by October 31, 2005, it agrees to pay a stipulated penalty of \$100.00 per day the Final Report is late.
- E. If Respondent fails to reduce its fugitive emissions, it agrees to pay stipulated penalties according to the following schedule:
 - (1). Respondent's total liability for stipulated penalties shall never exceed \$16,893.75, (the amount the dollar part of the civil penalty was revised due to the SEPs);

- (2). If Respondent completes the SEPs satisfactorily, and Respondent expended at least \$85,548.60 (90% of \$95,054.00), for the SEPs, it shall pay no stipulated penalty;
 - (3). If Respondent completes the SEPs unsatisfactorily, but Respondent a) made a good faith and timely effort to complete the SEPs; and, b) certifies with supporting documentation that it expended at least \$85,548.60 (90% of \$95,054.00), it shall pay no stipulated penalty;
 - (4). If Respondent completes the SEPs satisfactorily, but expends less than \$85,548.60 (90% of \$95,054.00) for the SEPs, it shall pay a stipulated penalty of \$1,689.37 (10% of \$16,893.75 (the amount the dollar part of the civil penalty was revised due to the SEPs);
 - (5). If Respondent completes the SEPs unsatisfactorily, it shall pay a stipulated penalty of \$16,893.75 (the amount the dollar part of the civil penalty was revised due to the SEPs).
 - (6). Respondent shall submit any payment of stipulated penalties with its SEP Final Report due to U.S. EPA under subparagraph D above.
- F. Respondent certifies its SEPs are not required under any federal, state or local law.
- G. Respondent agrees that until it submit its SEPs Final Report and pays all stipulated penalties for which it is liable, in any public description of its SEPs, it must include the following disclaimer or its substantial equivalent: "Barrett Paving Materials, Inc., has undertaken its SEPs under an agreement with the U.S.

Environmental Protection Agency in resolution of an enforcement action filed against for violating the Clean Air Act.”

12. Complainant is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim pursuant to 31 U.S.C. § 3717. Therefore, interest will begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and ⁴loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e).

13. This CAFO shall not relieve Respondent of their obligation to comply with all applicable provisions of federal, state, county, and municipal statute, law, regulation, or ordinances, nor shall it be construed by Complainant or Respondent to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

14. This CAFO constitutes a settlement by Complainant of the facts, violations, and legal claims alleged in the Complaint, documented in Complainant's Prehearing Exchange, and for the proposed civil penalties sought pursuant to section 113(d) of the Act, 42 U.S.C. § 7413(d). This CAFO also constitutes a settlement by Complainant of any other civil violations which are based upon the same facts alleged in the Complaint, and documented in Complainant's Prehearing Exchange. Nothing in this CAFO is intended to or shall be construed to operate in any

way to resolve any criminal liability of the Respondent. Except as provided herein, compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant, and it is the responsibility of Respondent to comply with such laws and regulations.

15. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CAFO.

16. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

17. This CAFO constitutes the entire agreement between the parties.

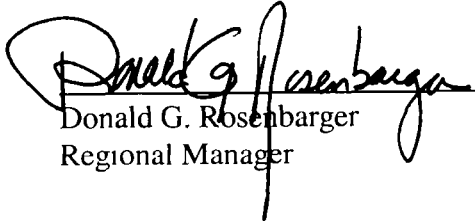
18. This CAFO constitutes a Final Order pursuant to section 113(d)(5) of the Clean Air Act, 42 U.S.C. § 7413(d)(5).

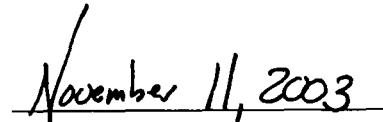
19. The effective date of this CAFO shall be the day it is filed with the Regional Hearing Clerk.

20. This CAFO shall terminate when Respondent has satisfied all of the terms and conditions of this CAFO.

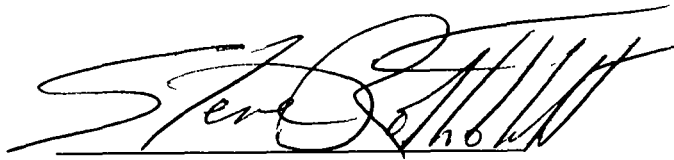
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Docket No. CAA-05-2003-0006.
Consent Agreement and Final Order.**

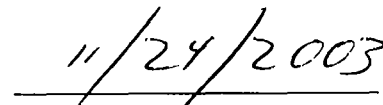
BARRET PAVING MATERIALS, INC..
MOUNT PROSPECT, ILLINOIS


Donald G. Rosenbarger
Regional Manager


Date

REGION 5
U.S. ENVIRONMENTAL PROTECTION AGENCY
COMPLAINANT


Stephen Rothblatt, Director
Air Radiation Division


Date

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with all of the terms and conditions of the Consent Agreement upon the filing of this Consent Agreement and Final Order with the Regional Hearing Clerk.

Thomas V. Skinner
Regional Administrator
Region 5
U.S. Environmental Protection
Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Date _____

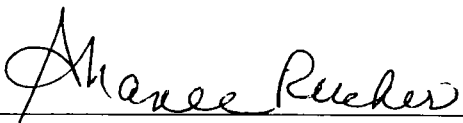
11-26-03

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2003-0006 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Barrett Paving Materials, Inc. by placing them in the custody of the United States Postal Service addressed as follows:

Donald G. Rosenbarger
Regional Manager
Barrett Paving Materials, Inc.
5800 Cherry Hill Road
Ypsilanti, Michigan 48198

on the 1st day of December, 2003.



Shanee Rucker
AECAS (MI/WI Section)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0296 0855